



**U.S. Department of Justice**

*United States Attorney  
Southern District of New York*

*The Silvio J. Mollo Building  
One Saint Andrew's Plaza  
New York, New York 10007*

August 14, 2009

**BY FACSIMILE**

Honorable Jeffrey T. Miller  
United States District Judge  
Southern District of California  
940 Front Street  
San Diego, California 92101

Re: In the Matter of the Seizure of All Funds on Deposit at Union Bank, N.A. in San Diego, California in Accounts 3530000248 and 3530000256, and All Funds on Deposit at Wells Fargo Bank in Escondido, California in Account Number 7986104185, Held in the Name of Account Services Corporation, and All Property Traceable Thereto, 09 CV. 1495 JM (RBB)

Dear Judge Miller:

The Government respectfully submits this letter to request that the Court prohibit Movant Account Services Corporation ("ASC") from obtaining discovery through the issuance of subpoenas to third parties until further order of the Court. As the Court may be aware, Michael Pancer, an attorney for ASC, has signed and issued at least five subpoenas to various financial institutions. The subpoenas purport to require the inspection of documents and the production of witnesses before this Court on August 21, 2009. Several examples of these subpoenas are attached hereto as Exhibit 1.

The issuance of subpoenas in this matter is – at the very minimum – premature. At present, ASC has simply filed a motion pursuant to Rule 41(g) of the Federal Rules of Criminal Procedure. The issue currently before the Court is limited to whether it should exercise anomalous jurisdiction over the motion for return of property under criminal procedural rules and convert it into a civil complaint governed by the Federal Rules of Civil Procedure. As addressed in the Government's memorandum in opposition to the motion, there is no basis for the Court to exercise anomalous jurisdiction over this motion because the seized funds have now been transmitted to the United States Marshal Service ("USMS") and are being held in connection with a criminal indictment in the Southern District of New York. A copy of Order Pursuant to 21 U.S.C. § 853, authorizing the USMS to maintain and preserve the seized funds until the conclusion of this criminal action is attached as Exhibit 2. Until and unless the Court exercises anomalous jurisdiction over ASC's criminal motion, there is no civil action pending and therefore no legal basis for serving civil subpoenas.

Honorable Jeffrey T. Miller

August 14, 2009

Page 2 of 3

Even if the Court had converted ASC's motion into a civil action, which it plainly has not, ASC's issuance of subpoenas would violate the Federal Rules of Civil Procedure, which state that "[a] party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order." Fed. R. Civ. P. 26(d)(1). Accordingly, ASC's attempt to seek discovery without obtaining a stipulation and court order would circumvent the requirements of the Federal Rules of Civil Procedure, even if they did apply.

ASC is plainly using its pending motion – notwithstanding the serious jurisdictional issues – as an improper means to obtain discovery for the use of ASC's owner, Douglas Rennick, in his pending criminal case in the Southern District of New York. *Cf. Bowman Dairy Co. v. United States*, 341 U.S. 214 (1951) (holding that Rule 17(c) subpoenas cannot be used as a means of obtaining discovery in a criminal case). Rennick is a fugitive in that case and, as such, is not presently entitled to any discovery pursuant to Rule 16 of the Federal Rules of Criminal Procedure. Yet Rennick's personal criminal attorney – Michael Pancer – is issuing subpoenas to various financial institutions purportedly based upon the matter pending in this Court, which seek a wide range of documents relevant to the criminal case. Additionally, Mr. Pancer has served a subpoena on Washington Mutual Bank / JP Morgan Chase – a bank noted prominently in the indictment of Mr. Rennick – even though no funds whatsoever were seized from that account, demonstrating that the true intent of the subpoena is to obtain documents for use in the criminal case, rather than to seek any return of property in this motion.

To be sure, if and when Douglas Rennick agrees to (or is compelled to) face the criminal charges against him in the Southern District of New York he will be entitled to Rule 16 discovery, and may be authorized by the court in that action to issue Rule 17(c) subpoenas directed towards third parties. But while Rennick remains a fugitive he should not be allowed to use his company's motion for return of property – particularly given its dubious jurisdictional basis – to obtain discovery to which Rennick is not yet entitled. *See* 28 U.S.C. 2466 (permitting disentitlement of civil forfeiture claimants who are fugitives from criminal prosecution); *Collazos v. United States*, 368 F.3d 190, 198-99 (2d Cir. 2004) (affirming disentitlement of claimant who chose not to enter the United States to face pending criminal charges).

Indeed, pursuant to Title 18, United States Code, Section 981(g)(1), a court is generally required to stay a civil forfeiture proceeding if the court determines that civil discovery will adversely affect the ability of the prosecution of a related criminal case. *See also* 21 U.S.C. 853(k) (prohibiting parties claiming an interest in property subject to criminal forfeiture from commencing a civil action against the United States concerning the validity of their interest in the property subsequent to the filing of an indictment). Although the instant matter is not a civil forfeiture proceeding, it raises similar concerns and should be treated comparably.

Accordingly, the Government requests that the Court order ASC to stop issuing subpoenas in this case unless and until this Court determines it has jurisdiction over the matter, converts it into a civil complaint, and sets an appropriate discovery schedule after consultation with both parties. The Government also requests that ASC be ordered to inform any parties to

Honorable Jeffrey T. Miller

August 14, 2009

Page 3 of 3

whom it has already issued Court subpoenas purporting to call for production of records or witnesses on or before August 21, 2009, that no response is presently required and will not be required absent further order from the Court.

Respectfully submitted,

PREET BHARARA  
UNITED STATES ATTORNEY

By: 

Jeff Alberts

Assistant United States Attorney

T: (212) 637-1038

cc: Michael Pancer, Esq.  
Barry Boss, Esq.

# EXHIBIT 1

AO88 (Rev. 12/06) Subpoena in a Civil Case

Issued by the  
UNITED STATES DISTRICT COURT

Southern

DISTRICT OF

California

In the Matter of the Seizure of All  
FUNDS ON DEPOSIT AT UNION BANK, N.A.,  
IN SAN DIEGO, CALIFORNIA, IN ACCOUNTS  
353000248 AND 353000256, AND ALL FUNDS ON  
DEPOSIT AT WELLS FARGO BANK, IN ESCONDIDO,  
CALIFORNIA, IN ACCOUNT NUMBER 7986104185,  
etc.

## SUBPOENA IN A CIVIL CASE

Case Number:<sup>1</sup> 09-CV-1495-JM(RBB)

TO: Custodian of Records  
Wells Fargo Bank  
401 B. St., Ste. 101  
San Diego, CA 92101

Person

AU

Date

Time

Initials

☐ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY

COURTROOM

DATE AND TIME

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION

DATE AND TIME

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
See attached.

PLACE United States Courthouse  
940 Front Street, San Diego, CA 92101

DATE AND TIME  
8/21/2009 1:30 pm

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES

DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Michael Pancer, Esq. 105 West F Street, 4th Floor, San Diego, CA 92101; (619) 236-1826

(See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page)

<sup>1</sup> If action is pending in district other than district of issuance, state district under case number.

Document as used in this subpoena means any and all tangible forms of expression, in any language or format, including drafts or finished versions, originals, copies, or annotated copies, however created, produced or stored (manually, mechanically, electronically, or otherwise), including without limitation: books, papers, files, writings, handwritten notes, typewritten notes, letters, correspondence, emails, memoranda, notebooks, ledgers, term sheets, telexes, telefaxes, telephone message slips, tape recordings, magnetic tapes, digital recordings, electronic recordings, photographs, computerized records stored on computer hard-drives, computer disks, computer hard-drives, recorded telephone messages, recorded fax transmissions, electronic mail messages, voice mail messages, microform and microfiche.

1. All documents provided by the account holder for account number 7986104185 to the bank, including but not limited to the initial application to open the account. This request excludes the batch files provided by the account holder for the purpose of issuing checks.
2. All documents relating to any due diligence inquiries made by the bank relating to these accounts or account holder.
3. All documents relating to the source of the funds in these accounts.
4. All documents prepared by the bank pursuant to its federal statutory or regulatory obligations pertaining to these specific accounts, and submitted to any government agency.
5. Any documents relating to the refusal by Citizen's Bank on or about April 2007 to honor checks issued from this account.
6. Any documents relating to an incident involving a Wells Fargo check issued to Kevin Lew-Hailer on or about March if 2008.

2009-08-05 12:10

UNION BANK - 0086

760-744-2498 &gt;&gt;

6196875210 P 2/2

U.S. District Court, Southern District of California

Issued by the  
**UNITED STATES DISTRICT COURT**

Southern

DISTRICT OF

California

In re: the Seizure of ALL FUNDS on DEPOSIT...

SUBPOENA IN A CIVIL CASE

V.

United States of America

Case Number: 09-CV-1485 JM (RBB)

(TO: Jeffery J. Jones  
 Union Bank of California  
 665 South Rancho Santa Fe Road  
 San Marcos, California 92076

- ☒ YOU ARE COMMANDED to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

## PLACE OF TESTIMONY

Edward J. Schwartz US Courthouse  
 US District Court, Southern District of California  
 940 Front Street, San Diego, CA 92101-8900

## COURTROOM

16

## DATE AND TIME

8/21/2009 1:30 pm

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

## PLACE OF DEPOSITION

## DATE AND TIME

- ☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

## PLACE

## DATE AND TIME

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

## PREMISES

## DATE AND TIME

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

DEPUTY OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

DEPUTY OFFICER'S NAME, ADDRESS AND PHONE NUMBER

Michael Pancer, Attorney for Petitioner, 105 West F Street, 4th Floor, San Diego, CA 92101  
 Phone: 619-236-1828

Aug 1 2009

Check Rule 43, Federal Rules of Civil Procedure, Subpart (e), (f), and (g), the next page.

If a person is pending in district when taken district of court, state district under case number:

AUG-07-2009 FRI 11:06 AM Wells Fargo Bank

FAX NO.

P. 02/04

\* A-188 (Rev. 12/96) Subpoena in a Civil Case

Issued by the  
UNITED STATES DISTRICT COURT

Southern

DISTRICT OF

California

In re: the Seizure of ALL FUNDS on DEPOSIT ...

## SUBPOENA IN A CIVIL CASE

V.

United States of America

Case Number:<sup>1</sup> 09-CV-1495 JM (RBB)

TO: Jeremy E. Douglas  
500 La Terraza Boulevard  
Escondido, California 92025

- ☒ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY Edward J. Schwartz US Courthouse US District Court, Southern District of California 940 Front Street, San Diego, CA 92101-8900	COURTROOM 16 DATE AND TIME 8/21/2009 1:30 pm
--	---

- ☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME
---------------------	---------------

- ☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in the place, date, and time specified below (list documents or objects):

PLACE	DATE AND TIME
-------	---------------

- ☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) <i>Michael Pancer</i> <i>Pro V + NT</i>	DATE <i>Aug 1 2009</i>
ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER Michael Pancer, Attorney for Petitioner, 105 West F Street, 4th Floor, San Diego, CA 92101 Phone: 619-236-1826	

<sup>1</sup> See Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), on next page.

<sup>2</sup> If action is pending in district other than district of issuance, state district under case number.



AUG-07-2009 FRI 11:06 AM Wells Fargo Bank

FAX NO.

P. 03/04

~~Subpoena to Appear in Court or Produce Documents~~

Issued by the  
**UNITED STATES DISTRICT COURT**

Southern

DISTRICT OF

California

In re: the Seizure of A/L FUNDS on DEPOSIT.

SUBPOENA IN A CIVIL CASE

V.

United States of America

Case Number: 09-CV-1495 JM (RBB)

TO: Andrew Ommen  
 2567 Via Loma Vista  
 Escondido, California 92029

☒ YOU ARE COMMANDED to appear in the United States District court at the place, date, and time specified below to testify in the above case.

## PLACE OF TESTIMONY

Edward J. Schwartz US Courthouse  
 US District Court, Southern District of California  
 940 Front Street, San Diego, CA 92101-8900

## COURTROOM

16

## DATE AND TIME

8/21/2009 1:30 pm

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

## PLACE OF DEPOSITION

## DATE AND TIME

☐ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):

## PLACE

## DATE AND TIME

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

## PREMISES

## DATE AND TIME

Any organization or not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT)

DATE

*Michael Pancer* *MOYANI*

*Aug 1 2009*

ISSUING OFFICE FOR NAME, ADDRESS AND PHONE NUMBER

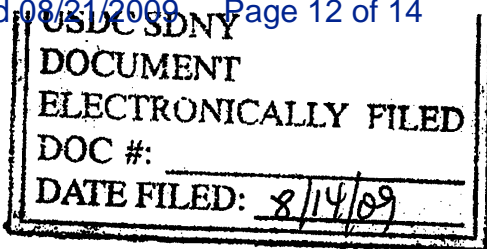
Michael Pancer, Attorney for Petitioner, 105 West F Street, 4th Floor, San Diego, CA 92101  
 Phone 619-236-1826

Use only if Federal Rules of Civil Procedure, 30(b)(6) are used and set out on next page.

If a fee is pending in this district, state district of issuance, state district under case number.



# EXHIBIT 2



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - -X

UNITED STATES OF AMERICA

:

ORDER PURSUANT TO  
21 U.S.C. § 853

-v-

:

09 Cr. 752 (SHS)

DOUGLAS RENNICK,

:

Defendant.

:

- - - - -X

This matter comes before the Court for an Order authorizing the Government and its agencies to maintain custody of certain property pending the conclusion of the pending criminal case.

WHEREAS, the property in question includes the following assets:

All United States currency funds from account number 7986104185, held at Wells Fargo Bank in the name of Account Services Inc., currently on deposit with the United States Marshals Service.;

All United States currency funds from account number 6503519834, held at Wells Fargo Bank in the name of Account Services Inc., currently on deposit with the United States Marshals Service.

All United States currency funds from account number 3530000248, held at Union Bank in the name of Account Services Corp., currently on deposit with the United States Marshals Service.

All United States currency funds from account number 3530000256, held at Union Bank in the name of Account Services Corp., currently on deposit with the United States Marshals Service.

(collectively, the "Subject Funds");

WHEREAS, the Subject Funds are already in the lawful custody of the Government;

WHEREAS, the Government has represented to the Court that it will maintain and preserve the Subject Funds throughout the pending criminal case so that they will be available for forfeiture;

WHEREAS, the Subject Funds are alleged to be forfeitable to United States (i) pursuant to 18 U.S.C. § 982, as property constituting or derived from proceeds obtained directly or indirectly as a result of a bank fraud conspiracy offense, (ii) pursuant to 18 U.S.C. § 982(a)(1), as property, real and personal, involved in a money laundering conspiracy offense, and (iii) pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461, as property, real and personal, that constitutes or is derived from proceeds traceable to the commission of a gambling conspiracy offense;

WHEREAS, Section 982 of Title 18, United States Code, provides that "the forfeiture of property under this section, including any seizure and disposition of the property under this section, including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be governed by" Section 853 of Title 21, United States Code, except subsection (d);

WHEREAS, Section 2461 of Title 28, United States Code, provides that the forfeiture of property under that section shall

be governed by Section 853 of Title 21, United States Code, except subsection (d); and

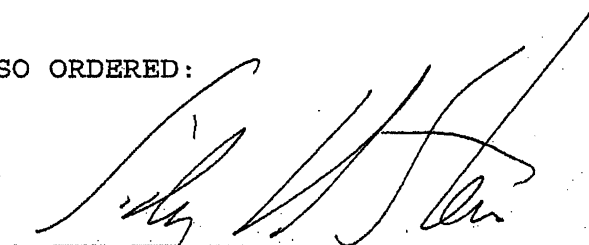
WHEREAS, Section 853(e)(1) authorizes the Court to take any action necessary to preserve the availability of property for forfeiture;

IT IS HEREBY ORDERED, that the United States and its agencies, including the Federal Bureau of Investigation and/or the U.S. Marshals Service, are authorized to maintain and preserve the Subject Funds until the conclusion of this criminal action, pending further Order of this Court,

AND IT IS FURTHER ORDERED, that this Order satisfies the requirements described in 18 U.S.C. § 983.

Dated: New York, New York  
August 14, 2009

SO ORDERED:

A handwritten signature in black ink, appearing to read 'Sidney H. Stein', is written over a horizontal line.

HONORABLE SIDNEY H. STEIN  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF NEW YORK